

## Committee on the Application of Standards

**Date:** 20 May 2021

*Governments appearing on the preliminary list of individual cases have the opportunity, if they so wish, to supply on a purely voluntary basis, written information before 20 May 2021.*

### ▶ Information on the application of ratified Conventions supplied by governments on the preliminary list of individual cases

#### Namibia

#### Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

(Ratification: 2001)

The Government has provided the following written information.

**In terms of the application of Article 1(1)(b) of the Convention on additional grounds, including HIV status, the Committee, requested Government to adopt specific measures to ensure that workers who are victims of discrimination on the basis of HIV status (actual or perceived) have effective access to legal remedies**

Namibia fully recognizes that the information requested are on a purely voluntary basis and that she should concern herself only on new developments.

The Government of Namibia is committed to eradicate HIV/AIDS as noted by the Committee of Expert in its Report that Namibia is the first country in African to have more than three-quarters of its HIV-affected population virally suppressed.

The Labour Act, Act 11 of 2007 provides for Dispute Resolution Mechanism for all disputes concerning fundamental rights and protection which include disputes over employment decision based on the ground of HIV status. These legal remedies consist of either referring a dispute to the Labour Commissioner for arbitration or approaching the Labour Court for enforcement of alleged infringed right or protection or other appropriate relief. It is our belief that the current legal remedies are effective and accessible to victims of discrimination on the basis of HIV status (actual or perceived).

**The Committee further requested information on the number of cases of discrimination based on HIV status and on their outcome.**

In 2019, one complaint against the Namibian Defence Force (NDF) was received by the Office of the Ombudsman. The complainant alleges that the NDF refused to employ him on grounds of his HIV status. The complainant was contacted by the Office of the Ombudsman to provide further information. The information is yet to be submitted by the Complainant. The investigation will commence once information is submitted.

**The Committee asks of the Government in the context of Articles 2 and 5-Implementation of the equality national policy and affirmative action to provide detailed information on the concrete measures taken to implement the action planned in the National Human Rights Action Plan 2015-19, in particular the review of the legislative and regulatory framework, and information on any research undertaken, obstacles encountered and results achieved in this regard. It further asks the Government to indicate what follow-up it gave to the recommendations in the Office of the Ombudsman's Special Report on Racism and Discrimination and the concrete steps taken to address such discrimination.**

The following are the concrete measures taken to implement the National Human Right Action Plan 2015-19:

- The Law Reform and Development Commission (LRDC) initiated a project on Obsolete Laws which resulted in the Repeal of Obsolete Law Act, 2018 (Act No. 21 of 2018). Some of the repealed laws were discriminatory in nature.
- The second leg of the project, which researches the existence of other obsolete and discriminatory laws, is completed and the report was handed to the Minister of Justice for further action. The Prohibition of Unfair Discrimination, Hate Speech and Harassment Bill has been circulated for comments and submissions by stakeholders, and a stakeholders' consultative meeting is scheduled for 28 May 2021. The Bill repeals the Racial Discrimination Prohibition Act 1991 (Act No. 26 of 1991) and its amendments.

The Information on any research undertaken is provided as follow:

- The Ombudsman researched on the reasons why racism, racial and other forms of discrimination still persist after 27 years of Namibian independence, and made numerous recommendations in his Report on the National Inquiry into Racism, Racial Discrimination and Other Forms of Discrimination and Tribalism. The Report was submitted to the National Assembly in October 2017.
- Completed research, stakeholder consultations and drafting of the White Paper on Indigenous Peoples' Rights in Namibia. The White Paper is due for Cabinet approval and adoption by the National Assembly.
- The LRDC in collaboration with the Department of Disability Affairs in the Office of the Vice-President undertook to first conduct a critical analyses in the current National Disability Legal Framework. The LRDC will assist in the review of the outdated Disability Council Act of 2004 with its National Disability Policy of 1997 and the domestication of the Convention on the Rights of Persons with Disabilities.

**With regard to Designated groups, the Committee asks the Government to continue: to (i) step up its efforts to promote access to training and employment opportunities for designated groups and review regularly the affirmative action measures to assess their relevance and impact and to provide information on any measures taken in this regard and the results achieved;**

Affirmative Action (Employment) Act 29 of 1998 which was amended through the Affirmative Action (Employment) Amendment Act 6 of 2007 has provisions requiring relevant employers to institute positive steps measures to further the employment of persons in designated groups. These measures may include training opportunities and giving preferential treatment in

employment decisions to suitably qualified persons from designated groups to ensure that such persons are equitably represented in the workforce.

Section 17(3)(a) and (b) further empowers the Employment Equity Commission in this regard in determining whether a designated group is equitably represented in the various positions of employment offered by a relevant employer, to take into account, in addition to such other factors as it may determine –

- a) the availability of suitably qualified persons in that designated group for such positions of employment; and
- b) the availability of persons in designated groups who are able and willing, through appropriate training programmes, to acquire the necessary skills and qualifications for such positions of employment.

The above is the legislative framework within which the Commission rely on the issue of access to training and employment opportunities for designated groups.

**The Government is requested to provide information on any follow-up given to the work of the Employment Equity Commission (EEC) related to the review of the Affirmative Action (Employment) Act, 1998, and on the activities of this Commission.**

Amendments to the Act

The amendments were already finalised and forwarded to the tripartite Labour Advisory Council (LAC) which in turn provided some inputs and returned the Act for incorporation of these materials. The EEC established a Task Force to attend to the amendments and the final draft amendment Act of the Task Force was provided to the office of the Employment Equity Commissioner on 11 May 2021. The Office now is conducting a desk study to assess, possibly incorporate and align to international legislation and best practices relating to (a) training and development of human resources, (b) expatriates and understudy skills transfer and (c) equal pay for work of equal value.

Reduction of reporting threshold - Increase Relevant employers

In terms of section 20 of the Act and the regulations made thereunder, currently only those employers employing 25 and more employees are regarded as relevant employers and covered by the Affirmative Action (Employment) Act. The current threshold was done in 2007 but since 1999 the threshold was set at those employing 50 and more. The Commission is of the view that it is time to reduce the threshold further to cover more employers and corresponding employees since it was shown through the 2018 Namibia Labour Force Survey that the number of employers and employees covered current due to the threshold is too low.

Activities of the Commission

The Commission revised its current 20 year old standard report content and structure guidelines for emphasis inter alia on access to training. The new guidelines and designed forms require reporting on qualifying as well as non-qualifying training and require employers to institute training measures, coupled with necessary budgetary allocation for in-house training, bursaries and human resource planning such as talent management, succession planning, promotions etc.

Coupled with the newly adopted reporting format a new review framework called the Integrated Review Scorecard (IRSC) was also developed. This is an internal tool to guide the review of affirmative action reports and plans submitted to the Commission. The Commission has since its inception has been trying to realise its objects without any objective criteria that could enhance its efficiency and effectiveness in carrying out a range of activities specified in section 4(a)-(f). The above led to a widespread perception that, the Commission was issuing AA

Compliance Certificates to undeserving relevant employers simply because they submit AA reports - not because they were implementing affirmative action in the workplace. The above prompted the need to develop and implement an integrated review scorecard. IRSC is to assist the Commission in determining the exact compliance effort each relevant employer is making in the process of implementing affirmative action in his/ her/ its workplace. Furthermore, the IRSC will assist the commission in the process of categorising relevant employers into various compliance categories which in turn can be used for various purposes such as training; possible charging for non-compliance with the AA (E) Act; giving of awards; consideration for state contracts, etc.

**The Government is asked once again to provide information on any legislative developments regarding the New Equitable Economic Empowerment Framework Bill 2015.**

The Draft Bill is almost ready for Cabinet consideration before it is tabled in the National Assembly in the Third or Fourth Quarter of the 2021-22 Financial Year.

The Technical Working Committee has been engaged with consultation and it is due to brief the Prime Minister on Monday 24 May 2021 @ 10h00 on progress, and also obtain political direction, if necessary.